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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,624	05/11/2001	Roland De La Mettrie	05725.0414-01	5645

22852 7590 12/19/2002  
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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 12/19/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Offic Action Summary</b>	Application No.	Applicant(s)	
	09/852,624	METTRIE ET AL.	
	Examiner	Art Unit	
	Eisa B Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 30 September 2002.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 30-53 is/are pending in the application.
  - 4a) Of the above claim(s) 47-53 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 30-46 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

<ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u>.</li> </ol>	<ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol>
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## DETAILED ACTION

1 This action is responsive to the reply filed on September 26, 2002.

2 The traversal is on the ground(s) that if the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions. This is not found persuasive because the inventions of groups I, II and III are patentably independent and distinct and they are classified and searched in different classes and subclasses and the search required for Group I is not required for Group II or III. Therefore, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

3 The Examiner considered the article submitted with the IDS and an initiated form of PTO-1449 is attached to this office action.

## NEW GROUND OF REJECTION

4 Claims 30-46 are pending in this application.

### *Claim Rejections - 35 USC § 103*

5 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomura et al. (US 6,027,719) in view of Lim et al. (US 6,045,590).

Tomura (US, 719) teaches an aqueous hair dyeing composition as claimed in claims 30-35 and 38-42 when the reference teaches a dyeing composition comprises 1.0% of uricase as 2-

electron oxidoreductase enzyme, 1.0% of uric acid as a donor, 1.5% of paraphenylenediamine as an oxidation base, 0.12% of meta-phenylenediamine as a coupler, anionic surfactants (see col. 3, lines 41-42) and monoethanolamine (see col. 6, Example 1). Tomura also teaches a process for dyeing hair similar to the claimed process when in the reference's process the dyeing composition as described above is applied to the hair after mixing the dyeing ingredients as claimed in claims 43-45 (see col. 6, lines 40-49).

The instant claims differ from the reference by reciting a dyeing composition comprising at least one of the specific anionic surfactants as claimed. Further, the reference fails to teach the claimed addition acid salts as claimed in claims 36-37. Furthermore, the prior art fails to teach a multi-compartment dyeing kit as claimed in claim 46. However, the reference teaches a hair dyeing composition comprising anionic surfactants (see col. 3, lines 41-42) and inorganic salts such as potassium salt (see col. 6, example I).

Lim (US' 590) in analogous art of hair dyeing composition teaches a composition comprising anionic surfactants such as acylsarcosinates and acylsethionates (see col. 9, lines 41-51) and inorganic or organic acid or acid salts such as sulfuric acid, tartaric acid and citric acid (see col. 10, lines 26-32).

Therefore, in view of teaching of the secondary reference one having ordinary skill in the art would be motivated to modify the primary reference by incorporating the anionic surfactants of acylsarcosinates and acylsethionates and the acid addition salts as taught by Lim to make such a dyeing composition. Such a modification would be obvious because the primary reference suggests the use of anionic surfactants and acid addition salts in the dyeing composition and also the secondary reference clearly, teaches that the a combination of different surfactants can be

used in dyeing compositions to impact particular viscosity and foaming properties (see col. 9, lines 49-50) and, thus, a person of the ordinary skill in the art would expect such a dyeing composition to have similar properties to those claimed, absent, unexpected results.

With respect to claim 46, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a kits or devices for dyeing hair because the reference teaches that ingredients are mixed for the preparation of such a dyeing composition (see col. 6, lines 41-44), and, thus, a person of ordinary skill in the art would used such a device or kit to separate the dyeing composition.

***Response to applicant's Arguments***

6       Applicant's arguments filed 9/26/2002 have been fully considered but they are not rendered moot in view of new ground of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Art Unit: 1751

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Elhilo   
December 11, 2002

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700